



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

November 28, 1951

Hon. Bascom Giles  
Commissioner  
General Land Office  
Austin, Texas

Opinion No. V-1355  
  
Re: Lease of minerals  
in river beds.

Dear Sir:

You have requested our opinion as to whether river beds are subject to lease for minerals other than oil and gas and the applicability of Articles 5388 to 5400, inclusive, R.C.S. 1925, to river beds.

The answer to your question is dependent upon the proper construction of the so-called withdrawal act, Acts 41st Leg., 3rd C.S. 1929, ch. 22, p. 526, codified as Article 5323b, V.C.S., which provides that "the surface and the minerals therein of all river beds and channels, and of all unsurveyed public free school lands, and portions of the same, in the State of Texas, are hereby withdrawn from sale or lease until otherwise provided by law." (Emphasis ours.) With respect to the minerals in these areas, we think the effect of this act was to suspend all laws then in force relative to their sale, lease, or development, including Article 5388, et seq., R.C.S. 1925, relative to the location and development of mining claims.

Since the passage of this act, the only law which has been enacted concerning the leasing or other disposition of minerals in river beds has been with reference to the oil and gas therein. Art. 5421c, Sec. 8-A, V.C.S. Until the Legislature enacts legislation providing for the leasing of other minerals, or until the minerals covered by Article 5388 et seq. are again made subject to disposition in these areas, such minerals retain their withdrawn status in accordance with the provisions of the withdrawal act. Therefore, we agree with your conclusion that at the present time there is no authority for the leasing of these minerals or for the location of claims looking to their ultimate development.



SUMMARY

The mineral estate in river beds was withdrawn from lease by Acts 41st Leg., 3rd C.S. 1929, ch. 22, p. 526, pending subsequent legislation, which has since been enacted only as to oil and gas. There being no subsequent legislation as to other minerals, they are not subject to lease or to location of claims under Articles 5388 to 5400, R.C.S. 1925.

Yours very truly,

APPROVED:

Jesse P. Luton, Jr.  
Reviewing Assistant

Charles D. Mathews  
First Assistant

HDP:bt

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Attorney General

By

  
H. D. Pruett, Jr.  
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